No. 92-780

IN THE

Supreme Court of the United States

OCTOBER TERM, 1993

Supreme Court, U.S.
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NATIONAL ORGANIZATION FOR WOMEN, *et al.*,

Petitioners,

—v.—

JOSEPH SCHEIDLER, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF OF NOW LEGAL DEFENSE AND EDUCATION FUND, AMERICAN HUMANIST ASSOCIATION, AMERICAN JEWISH COMMITTEE, AMERICAN MEDICAL WOMEN'S ASSOCIATION, INC., AMERICANS FOR RELIGIOUS LIBERTY, ASIAN AMERICAN LEGAL DEFENSE AND EDUCATION FUND, B'NAI B'RITH WOMEN, CALIFORNIA WOMAN LAWYERS, CHICAGO ABORTION FUND, FEMINIST MAJORITY FOUNDATION, LAMBDA LEGAL DEFENSE AND EDUCATION FUND, METHODIST FEDERATION FOR SOCIAL ACTION, NATIONAL ABORTION RIGHTS ACTION LEAGUE, NATIONAL BLACK WOMEN'S HEALTH PROJECT, NATIONAL FEDERATION OF TEMPLE SISTERHOODS, NATIONAL WOMEN'S LAW CENTER, NORTHWEST WOMEN'S LAW CENTER, UNION OF AMERICAN HEBREW CONGREGATIONS, UNITARIAN UNIVERSALIST ASSOCIATION, UNITED SYNAGOGUE OF CONSERVATIVE JUDAISM, VOTERS FOR CHOICE, WOMEN EMPLOYED, WOMEN'S EQUAL RIGHTS LEGAL DEFENSE AND EDUCATION FUND, WOMEN'S LAW CENTER, WOMEN'S LAW PROJECT, WOMEN'S LEGAL DEFENSE FUND, YWCA OF THE U.S.A., *AMICI CURIAE*, IN SUPPORT OF PETITIONERS

DEBORAH A. ELLIS
BURT NEUBORNE
NOW LEGAL DEFENSE AND EDUCATION FUND
99 Hudson Street
New York, New York 10013
(212) 925-6635

DAVID I. GOLDBLATT
Counsel of Record
CHARLES S. SIMS
HARRY W. LIPMAN
PROSKAUER ROSE GOETZ & MENDELSOHN
1585 Broadway
New York, New York 10036
(212) 969-3000

Attorneys for Amici Curiae

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The Racketeer Influenced and Corrupt Organizations Act (RICO), Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U.S.C. §§ 1961-1968 . . . . . *passim*

INTEREST OF *AMICI CURIAE*

This brief supporting the petitioners is filed, with the consent of the parties, on behalf of a wide range of organizations and their members. The specific interests of each *amicus* (described more fully in the Appendix, *infra*) differ, but all *amici* share a commitment to protecting the civil rights of women under law.

This case is of special importance to *amici* because it tests whether an important protection afforded by Congress will be denied to women by the imposition of a non-text-based requirement that renders RICO powerless to protect targets of sustained political terrorism. The violent methods of Operation Rescue, used today to deprive women and those who help women of constitutional and other valuable rights, can be used tomorrow against any of us.

SUMMARY OF ARGUMENT

The plain language of RICO lacks an economic motive requirement, and there is no basis for judicially imposing one. This Court's recent precedents have consistently rejected constructions of RICO that, like defendants' reading here, lack a textual basis. If RICO does require economic motive, it is present here because defendants have intentionally inflicted widespread and severe economic injury on their victims. There is no reason to believe that Congress intended to exclude political terrorism from RICO's broad coverage.

Application of RICO as written to defendants' repeated and continuous commission of violent, criminal acts does not pose a threat to the continuation of this nation's important tradition of protest and civil disobedience. RICO does not, and constitutionally could not, proscribe expressive conduct protected by the First Amendment. Nor is the non-violent civil disobedience which has characterized great movements for social change, such as that engaged in by Dr. Martin Luther King, threatened by RICO; while such bearing of moral witness may be unlawful, it does not constitute the kinds of serious crimes that are predicate acts under RICO. What RICO does threaten, and appropriately so, is the systematic commission of

criminal acts of violence and intimidation such as those engaged in by the defendants in this case.

ARGUMENT

I. NO BASIS EXISTS TO IMPOSE A JUDGE-MADE REQUIREMENT OF ECONOMIC MOTIVE ON THE PLAIN LANGUAGE OF RICO. IF, HOWEVER, A REQUIREMENT OF ECONOMIC MOTIVE EXISTS UNDER RICO, IT IS SATISFIED BY DEFENDANTS' AVOWED DESIRE TO INFLICT ECONOMIC INJURY ON THEIR VICTIMS

A. No Requirement Of Economic Motive Exists Under RICO

The Racketeer Influenced and Corrupt Organizations Act (RICO)[1] is premised on Congress' recognition that organized combinations of lawbreakers pose a unique threat to the rule of law.[2] Accordingly, RICO weaves multiple acts of organized lawlessness,

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[1] Pub. L. 91-452, Title IX, 84 Stat. 941, as amended, 18 U.S.C. §§ 1961-1968 (1993).

[2] Anglo-American law has long recognized that concerted criminal activity is more dangerous than the same activity committed by individuals. *Iannelli v. United States*, 420 U.S. 770, 778 (1975) (Powell, J.) ("[C]ollective criminal agreement--partnership in crime--presents a greater potential threat to the public than individual delicts.") (*quoting Callanan v. United States*, 364 U.S. 587, 593 (1961)). The aggravated risks posed by concerted action were analyzed by Justice Frankfurter in *Callanan*, 364 U.S. at 593 (concerted criminality affords greater chance of success in carrying out a planned offense, makes abandonment of the offense less likely, allows attainment of more complex criminal ends, and creates a greater chance of committing further, unrelated crimes).

committed as part of a pattern involving an "enterprise", into a single federal offense subject to substantial criminal and civil sanctions.[3]

In this case, plaintiffs allege that the named defendants formed and used an "enterprise" to facilitate the commission of a pattern of unlawful acts against women's health clinics and women seeking to exercise their constitutional right to terminate a pregnancy.[4] Despite Congress' use of broad, functionally descriptive language in RICO, the court below superimposed a non-textual requirement that the multiple acts of lawlessness covered by RICO must be motivated by a desire for economic gain.[5] *National Organization for Women Inc.*

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[3] Prior to RICO, American courts had traditionally treated multiple violations of law in splendid isolation from one another. *See People v. Zackowitz*, 254 N.Y. 192, 172 N.E. 466 (1930); *Fed. R. Evid.* 404(b).

[4] In the scenario envisioned by 18 U.S.C. §§ 1962(a) and (b) (1984), it is an "enterprise" as victim that provides the common denominator linking a pattern of lawless acts into a cognizable whole. *E.g.*, *United States v. Jacobson*, 691 F.2d 110, 111-12 (2d Cir. 1982); *United States v. Gambino*, 566 F.2d 414 (2d Cir. 1977), *cert. denied*, 435 U.S. 952 (1978). In the § 1962(c) scenario invoked by plaintiffs, it is an "enterprise" as predator that provides the common thread binding a pattern of lawlessness into a single offense. *E.g.*, *United States v. Turkette*, 452 U.S. 576 (1981); *Russello v. United States*, 464 U.S. 16 (1983). *See Reves v. Ernst & Young*, __U.S.__, 113 S. Ct. 1163 (1993).

[5] The paradigm of an organized combination of lawbreakers acting through systematic violation of law is the Mafia. Not surprisingly, the permutations envisioned in §§ 1962(a), (b) and (c), cover the characteristic behavior of organized crime. But the 1970 Congress did not merely outlaw the Mafia, both because it is impossible to draft a statute aimed solely at membership in a shadowy, wholly unlawful organization; and because the characteristic behavior of organized crime — systematic violation of law by an organized combination of lawbreakers — poses a serious threat to the rule of law no matter who the lawbreakers may be. Instead, Congress outlawed the Mafia's modes

(continued...)

v. Scheidler, 968 F.2d 612 (7th Cir. 1992). But see *Northeast Women's Center v. McMonagle*, 868 F.2d 1342 (3rd Cir.), cert. denied, 493 U.S. 901 (1989) (rejecting requirement of economic motivation).[6]

This Court has repeatedly rejected similar efforts to impose judge-made restrictions on the plain language of RICO. In *United States v. Turkette*, 452 U.S. 576 (1981), this Court upheld the application of RICO to an arson ring, rejecting a non-textual effort to limit "enterprise" in § 1962(c) to the type of victim-enterprise contemplated in §§ 1962(a) and (b) (1984). In *Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479 (1985), this Court rejected a non-textual effort to limit RICO liability to conduct resulting in criminal convictions. The *Sedima* Court rejected, as well, a non-textual effort to require a separate "racketeering injury" over and above the harms caused by defendants' acts of systematic lawlessness. In *H.J. Inc. v. Northwestern Bell Tel. Co.*, 492 U.S. 229 (1989), this Court rejected a non-textual effort to require that the pattern of lawless behavior underlying RICO involve separate illegal schemes.[7] Most recently,

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[5](...continued)
of operation. Under RICO, therefore, "organized crime is as organized crime does." Gerard E. Lynch, *RICO: The Crime of Being a Criminal Pts. 1 & 2*, 87 Colum. L. Rev. 661, 687 (1987).

[6] *See also United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983) (requiring economic motivation); *Feminist Women's Health Center v. Roberts*, 1989 U.S. Dist. LEXIS 5837 (W.D. Wash. 1989) (rejecting requirement of economic motivation). *See generally* Note, *The Use of Civil RICO Against Antiabortion Protestors and the Economic Motive Requirement*, 90 Colum. L. Rev. 1341 (1990); Note, *Civil Disobedience and Civil RICO: Anti-Abortionists as Racketeers*, 93 W. Va. L. Rev. 359 (1991).

[7] Consistent with RICO's text and purpose, the *H.J.* Court stressed that the requisite RICO pattern of lawlessness must "show that the racketeering predicates are related, *and* that they amount to or pose a (continued...)

in *Reves v. Ernst & Young*, ___ U.S. ___, 113 S. Ct. 1163 (1993), this Court construed § 1962(c) to require that a RICO defendant play some part in directing the enterprise's affairs, rejecting a non-textual requirement of "significant control" over the enterprise. *Id.* at 1170, n.4.

Two themes emerge from the Court's RICO cases: (1) strict fidelity to the Congressional text; and (2) sympathetic understanding that Congress intended RICO to provide broad federal protection against organized lawlessness. The lower court's effort to create an implied exception to RICO for politically motivated lawlessness ignores the Congressional text, the purpose of RICO and the relevant precedents of this Court.

No textual support exists for the imposition of a requirement of economic motive in a RICO case. The key definitions of "enterprise" and "pattern of racketeering activity" in 18 U.S.C. § 1961 make no distinction between lawlessness motivated by greed and identical patterns of lawlessness motivated by hatred, misplaced idealism or some other "non-economic" motive. The operative imposition of criminal and civil liability in §§ 1962 and 1964 likewise give no hint of distinguishing between "economic" and "non-economic" crimes.[8]

Nor is there any validity to defendants' argument that Congress' use of the term "enterprise" connotes a requirement of

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[7](...continued)
threat of continued criminal activity." 492 U.S. at 239 (emphasis in original).

[8] 18 U.S.C. § 1964(c) does require that a plaintiff be injured in her "business or property" by the defendants' pattern of lawlessness in order to invoke civil RICO. But § 1964(c) simply defines the harm civil RICO is designed to redress. It has nothing to do with the motive underlying defendants' acts. As the recent bombing of the World Trade Center in New York City illustrates, politically motivated terrorism can have devastating economic consequences.

economic motive. As defined in 18 U.S.C. § 1961(4),[9] "enterprise" is far broader than an economic combination. While the term "enterprise" as used in §§ 1962(a) and (b) will often — but not always — be an economic entity because of its status as victim or target,[10] the role played by a predator-enterprise under § 1962(c) has no intrinsic connection with commerce. Indeed, the worldwide resurgence of political, racial, religious and ethnic terrorism makes it painfully clear that the threat to the rule of law posed by organized combinations of lawbreakers is not confined to the economic sphere. If anything, Congress' perception in 1970 and again in 1984 of the inadequacy of a purely "transactional"[11] approach to patterns of lawlessness is most compelling in the area of political terrorism.

Finally, similar efforts to invent non-textual statutory exemptions based on an illusory distinction between "political" and "economic" motivation have been uniformly rejected by this Court, most tellingly in the context of the anti-trust laws, the conceded model for RICO. In *F.T.C. v. Superior Court Trial Lawyers Ass'n*, 493 U.S. 411 (1990), this Court explicitly rejected the argument that

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[9] Section 1961(4) defines an enterprise as:

> ... any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact though not a legal entity.

[10] Both the court below and the Second Circuit in *United States v. Ivic*, *supra*, appear to have ignored the fact that non-economic entities like political parties and churches might be the target of systematic lawless activity in violation of § 1962(b) with no economic motive. Patterns of lawlessness may be directed against churches, political parties and entire communities as victim-enterprises in order to silence or terrorize them. Kristallnacht was not designed to make a profit.

[11] The term "transactional" to describe the treatment of multiple violations of law as wholly independent events is drawn from Gerard E. Lynch, *RICO: The Crime of Being A Criminal, Pts. 3 & 4*, 87 Colum. L. Rev. 920, 932-37 (1987).

a horizontal price-fixing conspiracy was outside the purview of the anti-trust laws because the participant lawyers were motivated by a desire to protect their clients' constitutional rights. In *New Negro Alliance v. Sanitary Grocery Co.*, 303 U.S. 552 (1938), this Court rejected an effort to distinguish between "economically" and "politically" motivated labor picketing, holding that picketing by "outsiders" seeking to induce an employer to hire black workers was fully protected by the Clayton and Norris-LaGuardia Acts. *New Negro Alliance* was reaffirmed in *Jacksonville Bulk Terminals, Inc. v. International Longshoremen's Ass'n*, 457 U.S. 702 (1982), where this Court held once again that the existence of a political motive does not remove a labor dispute from the Norris-LaGuardia Act's gloss on the Clayton Act's labor exemption. Finally, in *International Longshoremen's Ass'n v. Allied Int'l, Inc.*, 456 U.S. 212 (1982), the Court unanimously rejected an effort to distinguish between secondary boycotts on the basis of "economic" and "political" motivation.

B. If A Requirement Of Economic Motive Exists Under RICO, It Is Satisfied By Defendants' Conceded Desire To Inflict Economic Harm On The Targets Of Their Lawless Acts

The court below insisted not only that defendants be shown to have acted with an economic motive, but also that the economic motive must be the acquisition of gain, not the intentional infliction of loss. *National Organization of Women Inc. v. Scheidler*, 968 F.2d 612, 629 (7th Cir. 1992). Since no textual basis exists for the imposition of *any* economic motive requirement, there is certainly no support in the statute for insisting that the motive be economic gain rather than the infliction of economic loss. There is nothing in the text or the legislative history of RICO to suggest that Congress wished to provide a remedy against systematic lawlessness motivated by greed, but no remedy for the identical lawless behavior causing the identical economic injury motivated by hatred or misplaced idealism.

Here, defendants' clear and unmistakable motive to cause economic loss is not in dispute. Defendants make no effort to conceal their desire to inflict economic injury on the targets of their repeated lawlessness. For example, defendant Scheidler concedes that ". . . the activities and methods proposed in this book are *intended* to interfere with and even stop the business of abortion . . . ." Joseph M. Scheidler, *Closed: 99 Ways to Stop Abortion* 18 (1985) (emphasis in original).[12] Most obviously, defendants' aim is to drive abortion clinics out of business. Since free-standing clinics provide inexpensive abortions, closing clinics would mean not only that fewer facilities would provide abortions, but also that the price of abortions would rise beyond the means of millions of women. JA 42, 46, 53.

To accomplish these ends, the defendants use numerous unlawful tactics including bombing and arson, physical destruction of property, forcible unlawful entry, physically blockading and assaulting clinic employees and clients as they enter or exit the clinics, lock and block (individuals locking themselves to cement blocks), and gluing clinic door locks to prevent entry. JA 39-40, 50, 53-55, 95, 118-97. These tactics are designed to compel clinics to close by forcibly preventing women from keeping appointments and by intimidating women from doing business with the clinics in the future. JA 49, 55.[13]

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[12] More recently, the National Director of Operation Rescue National testified before Congress, "My desire would be to see abortion clinics stopped, closed." *Freedom of Access to Clinic Entrances Act of 1993*, S. Rep. No. 117, 103d Cong., 1st Sess. 11 (1993) [hereinafter Senate Report].

[13] For example, in an attempt to force clinics to close, defendants engaged in four months of systematic actions in Atlanta, Georgia, in 1988, resulting in over 1,200 arrests. The defendants assaulted police officers and committed acts of false imprisonment and trespass. JA 56. The conspirators' violence and criminal conduct are further illustrated by the acts of co-conspirator John Burt, who led the action at the Ladies Center

(continued...)

Even when defendants are unable to close a free-standing abortion clinic permanently, they admit that their unlawful acts are designed to disrupt a clinic's operations,[14] intentionally inflicting economic injury both on the clinic and on women seeking an inexpensive abortion. The defendants' actions in this case are part of a national conspiracy directed at women, doctors and clinics.[15] Records of the National Abortion Federation show that between 1990 and June 1993, there have been 595 acts of violence at abortion and pregnancy health care clinics.[16]

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[13](...continued)
in Pensacola, Florida, which immediately preceded the tragic murder of Dr. David Gunn on March 10, 1993. Burt was known to be violent. During a 1986 siege of the same clinic, he injured two women and along with a companion destroyed medical equipment and other property. He had to be restrained from further violence by the police and was later convicted on criminal charges stemming from those actions. JA 50-52.

[14] Defendant Terry's book instructs followers in the ways clinic operations are most effectively interrupted. He exhorts readers to answer a "higher law" by "enter[ing] procedure rooms...[and] lock[ing] themselves in." He also urges them to arrive at the clinic before it opens and "block the door with their bodies, their cars, or special locks, so that no one can get in. It can be quite exciting...." He writes, "Sometimes it takes the police hours to remove the rescuers. No children will be killed during that time. Sometimes the abortuary will close for the whole day." Randall A. Terry, *Operation Rescue* 124 (1988). *See also* Joseph M. Scheidler, *Closed: 99 Ways to Stop Abortion* 214-216 (1985).

[15] In her testimony before the Senate Labor and Human Resources Committee concerning the Freedom of Access to Clinic Entrances Act of 1993, Attorney General Reno addressed the national character of the defendants' violence and organization: "This is a problem that is national in scope. It is occurring throughout the country...." Senate Report, *supra* note 12, at 12.

[16] National Abortion Federation, *Incidents of Violence & Disruption Against Abortion Providers* (1993). For the period between January
(continued...)

These violent acts have a disproportionate economic effect on low-income women because low-income women are more likely to use clinics than are other women.[17] The blockading and closing of clinics deny access to low-income women seeking inexpensive abortions and deprive these women of other low-cost reproductive health care. In the absence of clinics, low-income women must seek care in private physicians' offices at considerably higher costs or rely on services provided by public hospitals.[18] Low-income women are, however, unlikely to be able to afford private medical assistance because they are not likely to be covered by either public or private insurance.[19] Although most reproductive health care is provided by private physicians, low-income women cannot reasonably rely on

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[16](...continued)
1990 and June 25, 1993, the report documents 2 clinic bombings, 35 incidents of arson at clinics, and 18 attempted bombings or arsons. *Id.*

[17] Jacqueline A. Horton, *The Women's Health Data Book: A Profile of Women's Health in the United States* 100 (1992).

[18] Charges for an abortion performed in a hospital are up to seven times higher than one performed in an abortion clinic. *Id.* at 100. Moreover, many hospitals do not provide abortions; a 1988 study indicates that of the country's 5,533 short term general hospitals only 19% provide abortions. The number of abortion providers has consistently declined since 1985 and nonsecular hospital providers have led the decline. Stanley K. Henshaw, *Abortion Services in the United States, 1987 and 1988, in Abortion Medicine And The Law* 482, 494 (J. Douglas Butler, David F. Walbert eds., 1990).

[19] Public Health Service, U.S. Department of Health and Human Services, *Health Status of Minorities and Low Income Groups: Third Edition* 99 (1991).

private physicians for reproductive health care because of high costs and lack of insurance coverage.[20]

For low-income women who are eventually able to use the clinics' services, notwithstanding defendants' efforts to impede them, the defendants' actions greatly increase the costs of such services and their related expenses. Already, women seeking abortions often must travel great distances to obtain necessary services because 83% of all counties in the United States are without abortion providers.[21] The defendants' conspiracy limits access even more. When clinics are closed or their business curtailed, women must reschedule appointments or accept referrals to distant clinics. Being forced to return to clinics a second and third time imposes devastating economic consequences on women who cannot afford another day of lost wages; cannot afford another day of child care; and cannot afford the transportation, lodging, and meal costs of repeating the often

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[20] Women relying on Medicaid are hampered by the fact that many physicians do not accept publicly insured patients. One study shows that only 22,000 out of 34,000 office-based physicians providing obstetric, gynecological or general family care accept Medicaid. The Alan Guttmacher Institute, *Prenatal Care in the United States: A State and County Inventory* 63 (1989).

[21] Stanley K. Henshaw and Jennifer Van Vort, *Abortion Services in the United States, 1987 and 1988*, 22 Family Planning Perspectives 102, 106-07 (May/June 1990).

The circumstances for women seeking second or third trimester abortions are even more difficult. Only a small number of clinics provide abortion services after the first trimester. Only 13% of all physicians who perform abortions will do so after the 12th week and fewer still provide care after the 16th week of gestation. *See* Council on Scientific Affairs, American Medical Association, *Induced Termination of Pregnancy Before and After Roe v. Wade; Trends in the Mortality and Morbidity of Women*, 268 Journal of the American Medical Association, 3231, 3238 (1992) [hereinafter Council on Scientific Affairs].

excruciating trip of hundreds of miles to reach the clinic.[22] Once a woman has missed her scheduled appointment, she may not be able to make arrangements for another appointment for weeks, a delay that increases the risk of complications and therefore costs.[23] When this delay results in women being forced to undergo second trimester abortions, there are increased medical risks[24] and costs[25] and a

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[22] Horton, *supra* note 17, at 101 (33% of all abortions are performed outside of the woman's county of residence; 18% of women seeking abortion were forced to travel over 50 miles; 9% of these women traveled over 100 miles to secure care).

[23] *See* Council on Scientific Affairs at 3238 ("Anything that delays the [abortion] procedure increases the costs incurred, decreases providers' willingness to perform the abortion, and increases the health risks associated with the procedure").

Procedures performed at 11-12 weeks are three times more dangerous than abortions performed at or before 8 weeks. Stanley K. Henshaw, *Induced Abortion: A World Review, 1990, in Abortion, Medicine, And The Law* (J. Douglas Butler, David F. Walbert eds., 1990).

[24] The usual procedure for a second trimester abortion includes a series of injections and the insertion of pre-abortion laminaria to cause cervical dilation. The laminaria is removed after a 12-24 hour period. Each step of the procedure requires the presence of a doctor, other trained personnel and medical supplies and equipment. Delay in removal of the laminaria creates a serious potential for infection and hemorrhaging. William Cates Jr., *et al.*, *Dilatation and Evacuation Procedures and Second-Trimester Abortions; The Role of Physician Skill and Hospital Setting*, 248 Journal Of the American Medical Association 559, 560 (1982); Senate Report, *supra* note 12, at 15-16.

[25] On average, an abortion performed at a clinic at 10 weeks costs $245; at 16 weeks it costs $509; at 20 weeks it costs $897. Horton, *supra* note 17, at 100.

The increased cost of second trimester abortions also limits the ability of private funding to assist women with the cost of necessary health care. Organizations such as the Chicago Abortion Fund ("CAF"), one

(continued...)

longer period of recuperation, which increases the costs of lost wages and child and family care.

The economic harm resulting from clinic blockades and forced closures also affects low-income women harshly because of state and federal restrictions on Medicaid funding. Only twelve states provide Medicaid funding for abortions of pregnancies not resulting from rape or incest or that involve health conditions that threaten the life of the mother.[26] The cost of an abortion is a significant burden for low-income women, taxing already limited resources. Women must often decide whether to obtain abortion or use their funds for other necessities.

Defendants' tactics also prevent low-income women of all ages from receiving other crucial medical services, because many clinics targeted by defendants, including the named plaintiff clinics, offer an array of gynecological health services. Such clinics may be the only available sites offering low-cost mammography, family planning, preventive cancer screening, and sexually transmitted disease testing. JA 41-42.[27] The defendants' violent conduct thus

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[25](...continued)
of the *amici* here, are dedicated to aiding women financially with health care needs. When CAF and similar private funders are forced to assist with the higher costs of second trimester abortions, they are able to help fewer women. Thus, more low-income women are forced to pay the full costs of abortion services, precluding abortion as a realistic reproductive choice for many women.

[26] National Abortion Rights Action League Foundation, *Who Decides? A State-by-State Review of Abortion Rights* 145 (4th ed. 1993). States providing Medicaid funding for abortions are: Alaska, California, Connecticut, Hawaii, Massachusetts, New Jersey, New York, North Carolina, Oregon, Vermont, Washington, and West Virginia. *Id.*

[27] Almost all facilities that perform abortions provide other medical services, including contraceptive care, gynecologic care, STD treatment, (continued...)

results in economic harm to low-income women and restricts critically needed health care for this vulnerable community.

Lacking support in text, policy or precedent, the effort to graft a requirement of economic motive onto the plain language of RICO should be rejected. However, if an economic motive is required, it is plainly satisfied here by the economic harm intentionally visited upon women by defendants' lawlessness.

II. APPLICATION OF RICO TO ACTORS WITH NO OVERRIDING ECONOMIC MOTIVE DOES NOT POSE A THREAT TO THE CONTINUATION OF THIS NATION'S IMPORTANT TRADITION OF PROTEST AND CIVIL DISOBEDIENCE

In an attempt to avoid the plain language of RICO, defendants contend that RICO would pose a threat to this nation's important tradition of protest and dissent if it is construed to reach defendants' unlawful conduct.[28] Defendants not only disingenuously characterize their own protest methods as akin to those employed by certain significant protest movements, but they also appear seriously to misunderstand our nation's tradition of protest and civil disobedience.

Applied as written to defendants' repeated and continuous acts of violence and intimidation, RICO does not impinge on First Amendment activity. There is no reason to construe RICO more narrowly than its plain language in order to avoid constitutional

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[27](...continued)
obstetric care, HIV testing, infertility services, and general medical care. Stanley K. Henshaw, *The Accessibility of Abortion Services in the United States*, 23 Family Planning Perspectives 246, 247 (November/December 1991).

[28] *See* Brief of Respondents Joseph M. Scheidler, Timothy Murphy, Andrew Scholberg, and the Pro-Life Action League, Inc. in Opposition to Petition for Writ of Certiorari, at 6-8.

difficulties. *See, e.g., NLRB v. Catholic Bishop of Chicago*, 440 U.S. 490, 500 (1979). Unlike either the constitutionally protected expressive conduct that has characterized the bulk of social and political protest activity, or civil disobedience — the unprotected but non-violent conduct traditionally subject to relatively minor sanctions — defendants' conduct subject to RICO is wholly unprotected and extremely harmful. It falls into a third category, marked by highly organized acts of violence and intimidation, and thus deserves neither protection nor toleration.

A. RICO Poses No Threat To Protected Speech

Expression regarding issues of public concern "has always rested on the highest rung of the hierarchy of First Amendment values." *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982), *quoting Carey v. Brown*, 447 U.S. 455, 467 (1980). Accordingly, picketing, leafletting, public demonstration, and marches — conduct historically engaged in by social and political movements in an effort to challenge and change the laws and mores of our society — have all enjoyed constitutional immunity from government sanction or censure. *See, e.g., Organization for a Better Austin v. Keefe*, 402 U.S. 415 (1971). Indeed, the First Amendment protects even the most repugnant and offensive speech. *See Texas v. Johnson*, 491 U.S. 397 (1989); *Cohen v. California*, 403 U.S. 15 (1971); *Collin v. Smith*, 578 F.2d 1197 (7th Cir.), *cert. denied*, 439 U.S. 916 (1978).

RICO represents no threat to activity historically associated with the exercise of free speech and peaceful assembly, because such protected activity is not "chargeable," "indictable" or otherwise included in the definition of "racketeering activity" under 18 U.S.C. § 1961(1). For the same reason, RICO does not chill potential First Amendment demonstrators by instilling fear that the unlawful acts of others might trigger vicarious RICO liability. Protest organizations and their members who do not commit or agree to commit certain serious federal crimes, *e.g.*, wire fraud, mail fraud, bankruptcy fraud, securities fraud, and Hobbs Act extortion, or serious state crimes

involving murder, arson, extortion, bribery and the like (18 U.S.C. § 1961(1)), can have no liability under RICO. For, in order to establish RICO liability under § 1962(c), a plaintiff must plead and prove that each defendant conducted or participated in an enterprise through a pattern of racketeering activity. *See Sedima, S.P.R.L. v. Imrex Co.*, 473 U.S. 479, 495 (1985); *Reves v. Ernst & Young*, ___ U.S. ___, 113 S. Ct. 1163, 1169 (1993); *cf. Beauford v. Helmsley*, 865 F.2d 1386, 1391 (2d Cir.), *vacated*, 492 U.S. 914, *adhered to*, 893 F.2d 1433 (2d Cir.), *cert. denied*, 493 U.S. 992 (1989) (isolated or sporadic acts do not satisfy the pattern requirement). That RICO has been applied against Operation Rescue but not against the National Conference of Catholic Bishops is no accident but a function of the two organizations' substantially different methods of dissent.

Courts confronted with RICO-based anti-abortion protest cases have consistently guarded against any intrusions of RICO into activity protected by the First Amendment, without having to depart from the plain statutory language. *See Northeast Women's Center, Inc. v. McMonagle*, 868 F.2d 1342, 1349 (3d Cir.), *cert. denied*, 493 U.S. 901 (1989) (approving the following charge to the jury):

> The First Amendment of the United States Constitution guarantees the defendants a right to express their views. The defendants have a constitutional right to attempt to persuade the Northeast Women's Center to stop performing abortions. They have a constitutional right to attempt to persuade the Center's employees to stop working there and they have a constitutional right to attempt to persuade the Center's patients not to have abortions there. . . . The mere fact, also, that the defendants or some of their protests may be coercive or offensive, does not diminish the First Amendment right to a protest.

Even in its conspiracy provision, 18 U.S.C. § 1962(d), RICO requires that each defendant at the very least agree to commit a

§ 1962 violation.[29] Thus, the statute closely follows the First Amendment requirement that a defendant must be an active participant in an unlawful association, with a specific intent to further its unlawful ends, before being held responsible for its misdeeds. *Noto v. United States*, 367 U.S. 290 (1961); *Scales v. United States*, 367 U.S. 203 (1961); *Yates v. United States*, 354 U.S. 298 (1957); *United States v. Spock*, 416 F.2d 165 (1st Cir. 1969).

For similar reasons, RICO does not destroy the careful distinction made in *NAACP v. Claiborne Hardware* between protected speech and violent action. *See Wisconsin v. Mitchell*, ___ U.S. ___, 113 S. Ct. 2194, 2199 (1993), quoting *Roberts v. United States Jaycees*, 468 U.S. 609, 628 (1984) ("[V]iolence or other types of potentially expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection"); *see also Samuels v. Mackell*, 401 U.S. 66, 75 (1971) (Douglas, J., concurring). RICO simply does not punish those who merely associate with RICO violators or who belong to organizations that systematically engage in unprotected, violent activity.[30] *Reves*

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[29] *See, e.g., United States v. Ruggiero*, 726 F.2d 913, 921 (2d Cir.), *cert. denied sub nom. Rabito v. United States*, 469 U.S. 831 (1984) (dismissing RICO conspiracy count where government failed to show agreement to commit two predicate crimes); *Hecht v. Commerce Clearing House, Inc.*, 897 F.2d 21, 25 (2d Cir. 1990). Indeed, some courts have held that the agreed-to predicate acts must themselves form a "pattern." *See, e.g., Utz v. Correa*, 631 F. Supp. 592, 596 (S.D.N.Y. 1986) (RICO conspiracy claim against defendants dismissed because "[t]he only activities possibly chargeable to them fail to give rise to a pattern of racketeering activity").

[30] The lower courts have been vigilant in requiring that RICO allegations particularly describe the illegal conduct of *each* defendant. *See, e.g., Myers v. Finkle*, 758 F. Supp. 1102, 1111 (E.D. Va. 1990), *aff'd in pertinent part*, 950 F.2d 165 (1991) ("A RICO complaint must identify each 'person' who is alleged to be liable. Collectivizing 'defendants' in

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v. Ernst & Young, ___ U.S. ___, 113 S. Ct. 1163, 1170 (1993), offers further insulation from RICO liability for demonstrators who do not play "*some* part in directing the enterprise's affairs."

RICO's coverage so plainly excludes protected acts of protest that it would be unreasonable for a protester to eschew engaging in such conduct for fear of incurring RICO liability. RICO thus could very well have the effect of channeling toward lawful expressive activities those who might otherwise engage in both non-violent and violent protest tactics, thereby in fact augmenting the exercise of First Amendment rights.

B. RICO Also Poses No Threat To Non-Violent Civil Disobedience

A second important part of our tradition of protest consists of non-violent civil disobedience that cannot claim substantive constitutional protection, but that has served as an effective means of bearing moral witness against perceived injustice. *See generally* Martin Luther King, Jr., *Letter From the Birmingham City Jail* (1963). RICO poses no threat to such activity, since, properly construed, the "pattern of racketeering activity" required to trigger RICO does not include the acts of non-violent civil disobedience that

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[30](...continued)
the alleged pattern of racketeering activity will not suffice"); *Schick v. Ernst & Whinney*, [1990-1991 Transfer Binder] RICO Bus. Disputes Guide (CCH) ¶ 7685 at 11,324 (S.D.N.Y. January 18, 1991) (RICO allegations improperly failed to distinguish between the defendants); *Best Environmental Tech. v. Luff*, [1985-1987 Transfer Binder] RICO Bus. Disputes Guide (CCH) ¶ 6419 at 6,278 (E.D. Pa. July 24, 1986) ("In order to state a RICO claim against any individual defendant, the plaintiff must allege [each RICO element] *with regard to that defendant*") (emphasis added).

have characterized our tradition, such as criminal trespass and disorderly conduct.[31]

Examination of several important movements in this country's history, and of a highly effective, non-violent contemporary movement, demonstrates RICO's inapplicability to the kinds of expressive conduct and civil disobedience traditionally engaged in by social and political activists.

1. *The Abolitionist Movement*

In 1833, the American Anti-Slavery Society resolved that its members would not "vindicat[e slaves'] rights by resorting to physical force."[32] Accordingly, throughout the 1830s and '40s, the abolitionists kept their commitment to non-violence despite increasing violence directed at them by anti-abolitionists.[33] Abolitionists typically distributed newsletters advocating freedom for the slaves and organized campaigns to teach slaves how to read and write. These

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[31] The recent arrests of Patricia Ireland, President of NOW, and David Mixner, President Clinton's former senior campaign adviser, for acts of civil disobedience to protest the recently adopted policy relating to lesbians and gay men in military service (*see* Cindy Loose, *Former Clinton Adviser Arrested in Gay-Rights Protest at White House*, Wash. Post, July 31, 1993, at A5) make clear that even without an economic motive requirement RICO poses no danger of inhibiting traditional protest activity. RICO cannot reach Ireland's and Mixner's non-violent conduct because that conduct does not amount to predicate acts under 18 U.S.C. § 1961(1).

[32] Gerald Sorin, *Abolitionism* 89 (1972).

[33] Between 1830 and 1840, "there were three hundred cases of violent vigilante 'reprisal' against those who espoused anti-slavery opinions. The abolitionists did not generally retaliate." *Id.* at 90.

were crimes in the south but not acts that would have been subject to RICO as acts of racketeering, had RICO then been in effect.[34]

In their brief in opposition to plaintiffs' petition for writ of certiorari, at 7, respondents suggest that the abolitionists "extorted" the right to trade slaves. This argument is as inaccurate as it is offensive. The abolitionists operating the Underground Railroad cannot reasonably (and could not constitutionally) be construed as having taken "property" by extortion. Their purpose was to help slaves escape and start new lives, but their conduct involved no violence or threats of force to accomplish a deprivation of "property."[35] To the extent that violence did effect a transfer of property, of course, it was the violence of the Civil War, not that of the abolitionists.

2. *The Women's Suffrage Movement*

From its inception in the early 1870's, the women's suffrage movement was dedicated to obtaining voting rights for women in this country. Suffragists' activities for the most part were calculated to educate the public and included speeches, rallies, publishing a

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[34] John F. Hume, *The Abolitionists* 55-56; 76-77; 103-04; 116-17 (1905); *see also, Abolitionists in Northern Courts: The Pamphlet Literature* (Paul Finkelman, ed., 1988).

[35] The Model Penal Code defines theft by extortion to include "to bring about a transfer" of "property of another by threatening to: (1) inflict bodily injury on anyone; or ... (3) expose any secret tending to subject any person to hatred, contempt or ridicule; or ... inflict any other harm which would not benefit the actor." Model Penal Code §§ 223.0(5) and 223.4 (Official Draft and Revised Comments 1980). Extortion under the Hobbs Act, 18 U.S.C. § 1951(b)(2) (1984), is "the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right."

newspaper (*The Revolution*), and distributing leaflets and circulars.[36] Some suffrage activists went further and engaged in acts of civil disobedience, but not the kind of felonious activity listed under RICO.

In 1917, some suffragists commenced an aggressive campaign of picketing the area around the White House to send a resistant President Wilson as well as the nation the message that women would not be denied the franchise. Their protests led to arrests on such charges as "blocking traffic and unlawful assemblage"[37] and "displaying propagandist banners without a police permit."[38] In addition, the suffragists ignited symbolic (but illegal) "watchfires for freedom" outside the White House,[39] and at least one activist actually set fire to the White House lawn.[40] Some suffragists, including Susan B. Anthony, were arrested and convicted of attempting to register to vote, in violation of the Act of May 31st, which criminalized knowingly voting without having the right to vote. *See United States v. Anthony*, 24 F. Cas. 829 (C.C.N.D.N.Y. 1873).

None of these acts of civil disobedience, were they committed today, would constitute a predicate act under RICO.

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[36] *See* Eleanor Flexner, *Century of Struggle* 149, 153 (1975).

[37] *Woman Arrests Suffrage Pickets,* N.Y. Times, June 23, 1917, at 9.

[38] *Seize 12 Militants Near White House,* N.Y. Times, June 26, 1917, at 13.

[39] Linda G. Ford, *Iron-Jawed Angels* 236 (1991).

[40] *Id.* at 238. Setting such fires would not constitute arson. *See* Model Penal Code § 220.1 (1962): A person is guilty of arson ... if he starts a fire ... with the purpose of:

(a) destroying a building or occupied structure of another; or

(b) destroying or damaging any property, whether his own or another's, to collect insurance for such loss ....

3. *Sit-Ins And The Civil Rights Movement*

Defendants' attempt to analogize their activities to the civil rights movement is grossly inapt. The civil rights activists of the early 1960s did not aim to shut down targeted businesses. Rather, they wanted to open up such businesses, through non-violent action, to all customers who chose to patronize them. Those engaging in lunch counter sit-ins, for example, did not use violence or threats of force to compel restaurants to close; the Montgomery bus boycott was not an extortionate attempt to deprive bus owners of patronage. When owners lost business, it was not the result of threats or acts of violence by civil rights activists, but of the owners' voluntary refusal to serve blacks in common with whites.

The sit-ins were calculated to be non-violent, and the activist participants went to extraordinary lengths to accomplish that result. The sit-ins at all-white lunch counters in the south began in February 1960 in Greensboro, South Carolina, and participation in this highly visible and effective protest activity spread so rapidly that by October of that year there had been sit-ins in 112 southern cities.[41] At first unorganized, the sit-ins were soon being orchestrated by such organizations as the Congress of Racial Equality and the Southern Christian Leadership Conference (SCLC), the latter group led by Dr. Martin Luther King, Jr., organizations that consistently advocated non-violence.[42] The protestors themselves, despite intense provo-

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[41] Juan Williams, *Eyes on the Prize* 140 (1987).

[42] The mass meeting that organized the Nashville sit-in movement included a lecture on nonviolence. Taylor Branch, *Parting the Waters: America in the King Years 1954-63* 274 (1988). Similarly, at the April 1960 conference for sit-in organizers sponsored by the SCLC and attended by the Student Nonviolent Coordinating Committee, among others, the keynote speaker advocated non-violent protest. Branch, *supra*, at 291.

cation by white segregationists,[43] followed the credo of non-violence.[44]

Defendants' attempt to characterize sit-ins as extortionate reveals an extreme misreading of history. By far the majority of violence associated with the entire civil rights movement was directed at peaceful protestors, not committed by them.

4. The Gay Rights Movement

A measure of the frivolousness of respondents' contention that application of RICO to them would threaten the kinds of expressive conduct in which movements for social change engage, and on which the opportunities for orderly change in our society depend, is the fact that RICO has not been and could not be successfully applied to one of the principal civil rights movements today, the gay and lesbian rights movement.

Gay rights activists have achieved their successes in the last decade almost entirely through protected conduct — public education,

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[43] A student who participated in the Nashville sit-ins described an attack by white teenagers: "[They] stood in the aisles insulting us, blowing smoke in our faces, grinding out cigarette butts on our backs and finally pulling us off our stools and beating us. Those of us pulled off our seats tried to regain them as soon as possible, but none of us fought back in anger." Williams, *supra*, at 133 (citation omitted).

[44] Many of the decisions of this Court stressed the peacefulness — indeed the politeness — of the sit-in protestors. *See, e.g., Lombard v. Louisiana*, 373 U.S. 267, 268 (1963) (restaurant manager stated that protestors "did not cause any disturbance, ... were orderly ...."); *Peterson v. City of Greenville*, 373 U.S. 244, 247 (1963) ("[t]he manager and the police conceded that the petitioners were clean, well dressed, unoffensive in conduct, and that they sat quietly at the counter ...."); *Barr v. City of Columbia*, 378 U.S. 146, 150 (1964) (overturning a breach-of-peace conviction on the ground that "petitioners were polite, quiet, and peaceful from the time they entered the store to the time they left").

and grass-roots political organizing to support (or oppose) political candidates, legislation and referenda.[45] The principal national organizations embodying the movement over the years, including the Mattachine Society of the 1950s, the Gay Activist Alliance of the 1960s and '70s, the Campaign for Military Service, the National Gay and Lesbian Task Force, and Lambda Legal Defense and Education Fund, have advocated seeking change, and have sought change, without violence or the other illegal actions in which Operation Rescue and its co-conspirators have engaged.[46] Indeed, there are no noted prosecutions of gay rights activists for political protest; and, apart from the famous evening of resistance outside the Stonewall Bar in Greenwich Village, New York, where gay men resisted the efforts of police to arrest patrons for alleged violations of morals laws (a defensive engagement not subject to RICO that differed from Operation Rescue's repeated acts of violence and aggression as night from day), it is difficult if not impossible to list cases testing whether activity claimed to be political crossed the line into criminal activity.[47]

In sharp contrast to the activities of the Pro-Life Action Network, gay rights activists have attempted to bring about the changes they desire not through violence directed at those who disagree with them or who have discriminated against them, or by

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[45] *See generally* John D'Emilio, *Sexual Politics, Sexual Communities* (1983); Jonathan Katz, *Gay American History* (1976); Martin Duberman, *Stonewall* (1993); Adam, *The Rise of a Gay and Lesbian Movement* (1987); Licata, *The Homosexual Rights Movement in the United States*, in *6 J. of Homosexuality* at 170-84 (1981); Rubenstein, ed., *Lesbians, Gay Men, and the Law* (1993); *cf. Gay Students Serv. v. Texas A & M Univ.*, 737 F.2d 1317 (5th Cir. 1984), *cert. denied*, 471 U.S. 1001 (1985).

[46] *Id.*

[47] *Id.*

making others fear for their safety, but by bringing lawsuits, marching, and speaking out. Application of RICO as written to the type of conduct alleged in petitioners' complaint would have no chilling effect whatsoever on the gay rights movement.

C. RICO Does Pose A Threat To Political Terrorism, But Does Not Thereby Threaten Either Protected Expression Or Civil Disobedience

Unfortunately, illegal expressive acts have not always been confined to the arena of non-violent civil disobedience. Too often in our history, zealots, convinced of the absolute moral justice of their cause, have resorted to physical violence and intimidation in an effort to force others to relinquish important and valuable rights. Such political terrorism deserves no toleration, for whatever expressive content it may have is wholly overshadowed by the harm and destruction it causes.

Despite their alleged intention to bring about social change through First Amendment-protected activity, the defendants in this case have engaged in political terrorism.[48] Attempting to end abortion through forceful, coercive, and violent methods far removed from protected conduct or civil disobedience, defendants have, for example:

- threatened and used violence to force employees of clinics to abandon their jobs and to force those employees, as well as doctors, patients and prospective patients to relinquish important and valuable economic rights and property interests (JA 50-51, 55-57, 67);

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[48] Moreover, in contrast to some who commit symbolic acts to call attention to their cause and to gain influence, or who engage in activity to exert pressure directly on public officials, defendants use terrorism as a direct tool to impose their will on targeted groups.

- conspired to steal and stolen fetal remains and confidential patient and doctor information from laboratories to force clinic doctors, patients and prospective patients not to participate in abortions for fear of disclosure of private, sensitive information (JA 58-62, 69-70; and
- organized and implemented so-called "blitzes" or "rescues" in which scores of anti-abortion activists forcibly break into health clinics, violently disrupt clinic business, vandalize clinic property, and threaten the safety and well-being of all clinic affiliates (JA 55-57, 66-70). *See also* JA 95, 118-97.

These criminal acts have been devised and carefully orchestrated by an interstate network of lawbreaking anti-abortion groups associated in the Pro-Life Action Network, the goal of which is to shut down abortion-providing clinics by whatever means necessary.[49] Defendants have demonstrated their commitment to unlawful means by aiding and abetting others to shut down clinics by a combination of blockades, sieges, vandalism and the creation of a

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[49] Defendants, and others, have by no means limited their anti-abortion violence and intimidation to the specific acts at issue in this case. In addition to scores of lawsuits brought against Operation Rescue across the country over the past five years, current lawsuits include *New York State NOW v. Terry*, 1993 U.S. App. LEXIS 16355, (2d Cir. July 2, 1993) (per curium) (reinstating prior opinion, 961 F.2d 390 (2d Cir. 1991), in light of *Bray v. Alexandria Woman's Health Clinic*, ___ U.S. ___, 113 S. Ct. 753 (1993)); *Pro Choice Network v. Walker*, 994 F.2d 989 (2d Cir. 1993); *Town of West Hartford v. Operation Rescue*, 991 F.2d 1039 (2d Cir. 1993), *petition for cert. filed*, ___ U.S.L.W. ___ (U.S. July 19, 1993) (No. 93-____); *NOW v. Operation Rescue*, 816 F. Supp. 729 (D.D.C. 1993), *appeal pending*.

physically threatening and intimidating atmosphere, and by directly undertaking those activities themselves.[50]

RICO is an appropriate and constitutional response to such highly organized and widespread criminal activity. Far from threatening the First Amendment or our tradition of civil disobedience, its application to circumstances like those here promises to help put a stop to the intolerance of violent, self-righteous zealots bent on subverting the rule of law.

CONCLUSION

The statutory text does not include the economic motive element that the Seventh Circuit imposed to justify its dismissal of plaintiffs' RICO claim, and the wise policy of construing statutes in order to avoid constitutional doubt does not require implying any such element. If an economic motive were required, it is surely satisfied by defendants' intentional infliction of economic harm on petitioners. Concern for free speech and assembly rights, and even for the right to engage in traditional acts of civil disobedience, does not warrant immunizing defendants' widespread, organized criminal activity from

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[50] *See also Northeast Women's Center, Inc. v. McMonagle*, 670 F. Supp. 1300 (E.D. Pa. 1987), *aff'd in pertinent part*, 868 F.2d 1342 (3d Cir.), *cert. denied*, 493 U.S. 901 (1989), in which the plaintiff, a women's health center offering abortion services, proved at trial that, at various times over almost a two-year period, the defendants not only trespassed and blockaded the health center, they (1) knocked down and injured clinic employees, (2) surrounded and pounded on the windows of employees' cars, and (3) pushed, shoved, and tugged on patients who attempted to enter the health center.

RICO; those who do not commit or agree to commit serious crimes cannot be found liable under RICO. Accordingly, the judgment of the Court of Appeals should be vacated, and the case remanded for trial.

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August 13, 1993

Respectfully submitted,

DAVID I. GOLDBLATT,
Counsel of Record
CHARLES S. SIMS
HARRY W. LIPMAN
PROSKAUER ROSE GOETZ
& MENDELSOHN
1585 Broadway
New York, New York 10036
(212) 969-3000

DEBORAH A. ELLIS
BURT NEUBORNE
NOW LEGAL DEFENSE
AND EDUCATION FUND
99 Hudson Street
New York, New York 10013
(212) 925-6635

Attorneys for *Amici Curiae*

APPENDIX

APPENDIX

STATEMENTS OF INTEREST OF *AMICI CURIAE*

The **NOW Legal Defense and Education Fund** (NOW LDEF) is a leading national non-profit civil rights organization that performs a broad range of legal and educational services in support of women's efforts to eliminate sex-based discrimination and to secure equal rights. NOW LDEF was founded as an independent organization in 1970 by leaders of the National Organization for Women. A major goal of NOW LDEF's work is to secure reproductive rights and specifically to ensure that women have access to clinics. To this end, NOW LDEF has litigated, both directly and as *amicus*, numerous cases against Operation Rescue, including *Bray v. Alexandria Women's Health Clinic*, ___ U.S. ___, 113 S.Ct. 753 (1993), which was argued by the legal director of NOW LDEF.

The **American Humanist Association** (AHA) is a national non-profit educational-lifestance organization founded in 1941. With more than 5,000 members across all 50 states, the AHA supports freedom of choice for all women with regard to reproductive matters and opposes all efforts to reduce accessibility to reproductive health services.

The **American Jewish Committee** (AJC) is a national membership organization, founded in 1906 to protect the civil and religious rights of Jews. AJC has always believed that the best way to accomplish this goal is to help preserve the constitutional rights of all Americans. AJC strongly supports a woman's constitutional right to reproductive freedom. AJC believes that access to abortion services is an integral component of this fundamental right and must be secured for all American women. While AJC supports the First Amendment rights of all Americans, it deplores the criminal interference with a woman's ability to exercise her constitutional right to choose.

American Medical Women's Association, Inc. (AMWA) is a non-profit organization of 13,000 women physicians and medical students. One of AMWA's primary missions is to promote quality health care for women. AMWA strongly supports laws which protect the right of the pregnant patient, in consultation with her physician, to make a personal, medically-informed decision whether or not to continue a pregnancy.

Americans for Religious Liberty (ARL), founded in 1981, is a nationwide non-profit public interest educational organization of over 9,000 members and supporters. ARL is dedicated to defending church-state separation and religious liberty, which includes the fundamental right of individual women to freedom of conscience in dealing with problem or unintended pregnancies, free of government or private interference. ARL has appeared before this Court in several religious liberty cases, most recently in *Lee v. Weisman*, ___ U.S. ___, 112 S. Ct. 2649 (1992).

Founded in 1974, the **Asian American Legal Defense and Education Fund** (AALDEF) is a civil rights organization that addresses critical problems in the Asian American community through litigation, advocacy, and community education. Its current program includes voting rights, immigrant rights, labor and employment rights. AALDEF represents victims of anti-Asian violence and seeks redress for Japanese Americans who were interned in U.S. camps during World War II. AALDEF supports the right of women to choose whether to have an abortion and opposes the violent acts of anti-abortion groups that prevent women from exercising that right.

B'nai B'rith Women is an organization of 100,000 Jewish women in the United States and Canada. It is strongly committed to helping women improve the quality of life for themselves, their families and society. In line with this goal, B'nai B'rith Women has worked for more than 20 years to assure a woman's right to choose in matters of reproductive rights. B'nai B'rith Women believes that anti-abortion violence is pointless, destructive behavior, and B'nai B'rith Women

has pressed for stiff penalties to be imposed on perpetrators of these crimes.

The **Chicago Abortion Fund** (CAF) is a non-profit agency founded in 1986 to lower the economic barriers to reproductive freedom. CAF's primary purpose is to make safe, legal abortions accessible to economically disadvantaged women by providing referrals and financial assistance to poor women in the Chicago area who seek abortion services; compiling statistics to document the extent of the need for financial assistant for abortion services; and engaging in activities to heighten public awareness of the problems faced by poor women who wish to terminate an unwanted pregnancy. CAF is acutely aware of the special problems low-income women face when they seek access to safe and affordable abortion services. Current and potential CAF clients suffer economic harm by the campaign of illegal anti-abortion violence carried out by the defendants in this case.

Founded in 1987, the **Feminist Majority Foundation** is a non-profit national organization with offices in Arlington, Virginia and Los Angeles, California. The Feminist Majority Foundation, which runs the largest clinic defense project in the nation, has witnessed first-hand the violence of anti-abortion extremists directed against clinics, health care workers, and women. Anti-abortion extremists are conspiring in an organized way to break the law nationwide and close established, legal businesses. RICO should provide a federal remedy for ending this reign of terror.

Lambda Legal Defense and Education Fund (Lambda) is a national public interest law organization that advocates for the rights of lesbians and gay men through impact litigation and education. The constitutional questions implicated in the struggle of women to control their bodies are similar to those faced by lesbians and gay men who seek to assure the right of individuals to engage in intimate associations without government interference. Lambda is specifically interested in the issues raised by this case because: (1) the application of RICO to a concerted pattern of violence directed at women who

use health clinics is of importance to lesbians and gay men, who have themselves been victims of campaigns of violence; and (2) at the same time, inasmuch as the full civil rights of lesbians and gay men have not yet been recog[illegible]ed, Lambda has a vital interest in assuring that the law protects legitimate protest while curbing violence.

The **Methodist Federation for Social Action** (MFSA) is a membership organization founded in 1907. MFSA's members are mostly United Methodist church members and leaders from across the entire United Methodist Church. In the course of a year, MFSA provides educational material and moral guidance and support to some 5,000 United Methodist activists and persons of conscience. Among MFSA's chief concerns is human rights, prominent among which are the reproductive rights of women. MFSA's interest in this case arises out of its belief that it is a human right of a woman to have available, and, if she so chooses, to use abortion facilities that are affordable, accessible and medically safe.

Founded in 1969, the **National Abortion Rights Action League** (NARAL) is the largest national organization working primarily to keep abortion safe, legal and accessible for all women. NARAL has 39 state affiliates and nearly 800,000 members nationwide. NARAL's mission is "[t]o develop and sustain a constituency that uses the political process to guarantee every woman the right to make personal decisions regarding the full range of reproductive choices, including preventing unintended pregnancy, bearing healthy children, and choosing legal abortion." NARAL works to elect pro-choice officials to all levels of government, and to protect the right to choose in the legislature, the courts, and at the clinics.

The **National Black Women's Health Project** (NBWHP) is a self-help, health education and advocacy organization which works to improve the health status and quality of life for African- American women and their families. It consists of 150 developing and established chapters in 25 states serving a broad constituency of approximately 2,000 members. The NBWHP is deeply concerned

about barriers that impede or prevent access to quality health services, including medically safe abortion services. The already poor health status of low-income African American women, due in part to lack of access to health care, is further exacerbated by the hostility, intimidation, and harm caused by clinic blockades. The NBWHP joins this brief to voice its opposition to the violent and harmful actions and tactics of Operation Rescue which prevent African American women from exercising their rights.

The **National Federation of Temple Sisterhoods**, (NFTS) including over 100,000 women of Reform Judaism in 600 local groups nationwide deeply committed to the social justice teachings of the prophets, serves Jewish and humanitarian causes. Since the 1960s the women of Reform Judaism have adopted resolutions in support of civil and social rights for all persons, anti-poverty programs and legislation, and the right to choose legal abortions. In 1987, the NFTS affirmed resolutions urging action to reduce teenage pregnancy and break the cycle of poverty. Moreover, the delegates at the recent 1991 Biennial Assembly called for support of legislation providing universal access to health care, including all aspects of reproductive health care, regardless of age, gender and economic status.

The **National Women's Law Center** (Center) is a non-profit legal advocacy organization dedicated to the advancement and protection of women's rights. Since its inception in 1972, the Center has fought to develop and protect women's rights in a variety of areas, including reproductive freedom, health care, employment, education, family support and income security. Protecting women's access to reproductive rights and health care services is an important component of the Center's mission to advance the status of women through the law.

The **Northwest Women's Law Center** (Law Center) is a non-profit public interest legal organization in Seattle, Washington working to advance the legal rights of women through litigation, education and legislative advocacy. The Law Center has been serving women

throughout Washington since 1978, and has recently expanded its litigation program to serve women throughout the Northwest. The Law Center has done extensive work in the area of reproductive rights, particularly on the issue of clinic access. The Law Center was instrumental in the passage of a Washington state Clinic Access Bill and also litigated against Operation Rescue to enjoin their blockades against women's health clinics in Washington.

The **Union of American Hebrew Congregations** (UAHC) is the congregational arm of Reform Judaism representing over 850 Reform Jewish synagogues throughout the United States and Canada with a membership of one and one-half million Jews. The UAHC has long been committed to religious freedom, First Amendment rights, the right to privacy, and the expansion of women's rights, and has engaged in extensive educational work regarding those rights.

The **Unitarian Universalist Association** is a religious association of more than 1,000 congregations in the United States, Canada and elsewhere. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation of church and state and of personal religious freedom. Most relevant to the case at bar are the Association's resolutions (a) affirming the right to choose abortion as a legitimate aspect of the right to privacy, and (b) promoting freedom of choice in reproductive matters including unrestricted access to counseling and abortion services, regardless of age, class, race or situation, without curtailing peaceful protest.

The **United Synagogue of Conservative Judaism**, founded in 1913, an association of Conservative congregations in North America, today consists of over 800 affiliated synagogues and over one and one-half million members. The objectives of the United Synagogue are the advancement of the cause of Judaism in America and the maintenance of Jewish tradition in its historic continuity.

Voters for Choice was founded by Gloria Steinem and Planned Parenthood Board Members in 1979, and is the only national organization devoted solely to electing pro-choice candidates to office. Voters for Choice has helped elect nearly 185 Members to Congress, and has also many governors and legislators. Voters for Choice provides technical assistance, strategic funding, and 13 years experience helping to elect those candidates who will be the pro-choice voices and votes in the halls of Congress and in the state legislatures. As the largest independent pro-choice political committee in the country, Voters for Choice is committed to electing leaders and to supporting efforts which will uphold reproductive rights for all women.

Women Employed is a national organization of working women, based in Chicago, with a membership of 2,000. Since 1973, the organization has assisted thousands of working women with problems of sex discrimination. Women Employed works to empower women to improve their economic status and to remove barriers to economic equity through advocacy, direct service and public education. Women Employed strongly believes that any limitation on women's reproductive rights will have a profoundly negative impact on woman's opportunities to achieve economic equity.

The **Women's Equal Rights Legal Defense and Education Fund** (WERLDEF) is a nonprofit corporation organized to ensure that women are treated equally under the law. It achieves its goal by educating women about their legal rights and by assisting them to vindicate those rights by providing access to the courts.

The **Women's Law Center** is an advocacy organization whose membership consists of attorneys and judges in Maryland. In existence since 1971, the goal of the Women's Law Center is to promote the legal rights of women through litigation, legislation and education. The Women's Law Center has worked to protect reproductive rights for all women, including participation as *amicus curiae* in cases dealing with that issue. The Women's Law Center

believes the issues involved in *NOW v. Joseph Scheidler et al.* are critical to the legal rights of women.

The **Women's Law Project** (WLP) is a non-profit, feminist legal advocacy organization located in Philadelphia. Founded in 1974, WLP works to abolish discrimination and to advance the legal and economic status of women through litigation, public education and individual counseling. The Women's Law Project believes that the right to reproductive freedom is a fundamental component of women's ability to control their lives and live as free and equal citizens. The WLP has challenged a wide variety of state statutes designed to restrict abortion rights, including the Pennsylvania statutes in *Planned Parenthood v. Casey*, ___ U.S. ___, 112 S. Ct. 2791 (1992). The WLP has also worked vigorously to stop anti-choice harassment of women seeking abortions and of abortion providers in Pennsylvania, representing *amici curiae* in *Northeast Women's Center v. McMonagle*, 868 F.2d 1342 (3d Cir. 1989), *cert. denied*, 493 U.S. 901 (1989), a case involving legal issues identical to those in this case. WLP believes RICO should be used to combat the ever-increasing levels of violence and harassment against women seeking abortions.

The **Women's Legal Defense Fund** (WLDF), a non-profit national advocacy organization, works at the federal and state levels to establish policies that offer equal opportunity to women, respond to women's basic economic and health needs, and enable women and men to participate fully in family and community life. Because WLDF believes that reproductive freedom for all women is fundamental to the achievement of these goals, it files *amicus curiae* briefs in major reproductive rights and health cases, advocates for reproductive rights and health care for women before Congress, and provides policy opinions about reproductive health policies to federal and state legislators.

The **YWCA of the U.S.A.** is a women's membership organization. Founded in 1858, it is committed to the empowerment of women and

to the elimination of racism. Currently, it serves over two million girls, women and their families through 400 YWCAs in 4,000 locations throughout the country. Because the YWCA has historically been concerned about women's health and the availability of care to women of all socio-economic backgrounds, it advocates that no woman should be deprived of reproductive choice if she needs it and it is not contrary to her personal beliefs. As we believe that legal restrictions and the prohibition of abortions affect primarily poor women, the YWCA of the U.S.A. supports the position taken in this *amicus curiae* brief.